

**ORDINANCE NO. 2010-8**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE  
OF BISCAYNE PARK, FLORIDA, AMENDING SECTION 15.1.10  
ENTITLED "FINES; LIENS" OF THE VILLAGE OF BISCAYNE PARK  
LAND DEVELOPMENT CODE; PROVIDING FOR SEVERABILITY;  
PROVIDING FOR INCLUSION; PROVIDING FOR RENUMBERING;  
PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, at its meeting of November 1, 2005, the Village Commission adopted Ordinance 2005-11, which established a Village Code Enforcement Board;

WHEREAS, Ordinance 2005-11 provided specific authority and procedures for the enforcement of the codes and ordinances of the Village consistent with Chapter 162 of the Florida Statutes; and

WHEREAS, staff has requested the elimination of a cap on code enforcement fines in order to be able to more effectively encourage compliance; and

WHEREAS, the Code Enforcement Board will retain the authority to reduce fines upon the finding of mitigating factors consistent with the Village Code; and

WHEREAS, the Village Commission has reviewed this ordinance and found that the amendment is in the best interests of the citizens of the Village;

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA AS FOLLOWS:

**Section 1.** Section 15.1.10 of the Village of Biscayne Park Land Development Code, entitled "Fines; Liens" shall be revised to read as follows:

**15.1.10        *Fines; liens.***

(a) The code enforcement board, upon notification by the code inspector that a previous order of the board has not been complied with by the set time, or finds a person to be a repeat violator under subsection (c), may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the board for compliance or, in the case of a repeat violation, for each day the repeat violation continues past the date of notice to the violator of the repeat violation. If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine.

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2 (b) Amount of fine.  
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4 (1) A fine imposed pursuant to this section shall not exceed the following:  
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6 a. Two hundred fifty dollars (\$250.00) per day per violation for a first  
7 violation;  
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9 b. Five hundred dollars (\$500.00) per day per violation for a repeat  
10 violation; and  
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12 c. Up to fifteen thousand dollars (\$15,000.00) per day if the code  
13 enforcement board finds the violation to be irreparable or irreversible in  
14 nature.  
15

16 d. A limit of forty thousand dollars (\$40,000.00) per  
17 violation unless the code enforcement board finds the violation to be  
18 irreparable or irreversible in nature.  
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20 (2) In determining the amount of the fine, if any, the code enforcement board shall  
21 consider the following factors:  
22

23 a. The gravity of the violation;  
24

25 b. Any actions taken by the violator to correct the violation; and  
26

27 c. Any previous violations committed by the violator.  
28

29 (c) Reduction of fine imposed pursuant to this section.  
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31 (1) The code enforcement board is hereby delegated the authority to hear requests for  
32 reduction of fines pursuant to this section and make the final decision on behalf of the village.  
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34 (2) For all requests for reduction of fine, the code enforcement officer shall submit a  
35 written recommendation to the code enforcement board or the administrative panel. In  
36 formulating the recommendation, the code enforcement officer shall consider criteria, which  
37 includes, but is not limited, to the following:  
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39 a. The cooperation of the respondent, including whether the respondent  
40 had appeared before the board at the original hearing;  
41

42 b. The documentation provided by the respondent in support of the  
43 request;  
44

45 c. Whether the respondent has new evidence or information which could  
46 not be provided at the original hearing;  
47

48 d. Whether there was any extraordinary hardship which existed or  
49 currently exists;

1  
2 e. Whether the respondent has come into compliance with the order of  
3 the board;

4  
5 f. The number of days that the violation existed;

6  
7 g. Whether the respondent has been deemed a repeat violator by the  
8 board;

9  
10 h. Whether the property is homestead or non-homestead property; and

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12 i. The total administrative cost to the village for the handling of the case,  
13 which cost will be inclusive of staff time and recording and release of lien  
14 fees.

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16 (3) The code enforcement board and the administrative panel shall consider the same  
17 criteria as the code enforcement officer.

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19 (4) The code enforcement board shall not waive administrative costs incurred by the  
20 local government in enforcing its codes. In addition, the code enforcement board and the  
21 administrative panel shall not waive costs of repairs incurred by the local government.

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23 (d) A certified copy of an order imposing a fine, or a fine plus repair costs, may be  
24 recorded in the public records and thereafter shall constitute a lien against the land on which the  
25 violation exists, or, if the violator does not own the land, upon any other real or personal property  
26 owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the  
27 same manner as a court judgment by the sheriffs of this state, including execution and levy  
28 against the personal property of the violator but such order shall not be deemed otherwise to be a  
29 judgment of a court except for enforcement purposes. A fine imposed pursuant to this part shall  
30 continue to accrue until the violator comes into compliance or until judgment is rendered in a suit  
31 to foreclose on a lien filed pursuant to this section, whichever occurs first. After three (3) months  
32 from the filing of any such lien which remains unpaid, the code enforcement board may  
33 authorize the village attorney to foreclose on the lien. No lien created pursuant to the provisions  
34 of this chapter may be foreclosed on real property, which is a homestead under the Florida  
35 Constitution, Art. X, § 4.

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37 Section 2. Severability. Should any section, provision, paragraph, sentence, clause of  
38 word of this Ordinance or portion hereof be held or declared by any court of competent jurisdiction  
39 to be unconstitutional or invalid, in part or application, it shall be considered as eliminated and shall  
40 not affect the validity of the remaining portions or applications of this Ordinance.

41 Section 3. Codification. It is the intention of the Village Commission of the Village of  
42 Biscayne Park, that the provisions of this Ordinance shall become and made a part of the Code of  
43 Ordinances of the Village of Biscayne Park, Florida, and that the Sections of this Ordinance may be

renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or other word or phrase in order to accomplish such intention.

Section 4. Conflicts. That all Ordinances or parts of Ordinances, Resolutions or parts thereof in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 5. Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

The foregoing Ordinance was offered by Commissioner Childress, who moved its adoption. The motion was seconded by Commissioner Anderson,

PASSED AND ADOPTED upon first reading this 4<sup>th</sup> day of May, 2010.

PASSED AND ADOPTED upon second hearing this 8<sup>th</sup> day of June, 2010.

**The foregoing ordinance upon being put to a vote, the vote was as follows:**


  
\_\_\_\_\_  
Roxanna Ross, Mayor

Mayor Ross: Yes  
Vice Mayor Cooper: No  
Commissioner Anderson: Yes  
Commissioner Bernard: No  
Commission Childress: Yes

Attest:

  
\_\_\_\_\_  
Maria Camara, Village Clerk

Approved as to form:

  
\_\_\_\_\_  
John J. Hearn, Village Attorney